IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

Writ Petitions Nos.4956 and 5444 of 2007

Pushpanjali Silk Private Ltd.,
represented by its Director
Sanjiv Kumar Jhunjhunwala — Petitioner in WP No.4956 of 2007

M/s. Sree Rajendra Textiles,
rep. by its partner S.Amarish — Petitioner in WP No.5444 of 2007

v.

1. The Commissioner of Customs
(Seaport-Imports),
Customs House, 60 Rajaji Salai,
Chennai 600 001. — Respondent 1 in both the W.Ps.

2. The Assistant/Deputy Commissioner
of Customs, Group 3 & 4,
Customs House, No.60, Rajaji Salai,
Chennai 600 001. — Respondent 2 in WP.4956 of 2007

2. The Assistant/Deputy Commissioner
of Customs,(DEPB) Gr.7-B,
Customs House,
No.60, Rajaji Salai,
Chennai 600 001. — Respondent 2 in WP.5444 of 2007

Writ Petition No.4956 of 2007 filed under Article 226 of the Constitution of India for the issue of mandamus directing the respondents to permit release of Mulberry raw silk imported under Bill of Entry No.356906 dated 14.12.2006 on a provisional assessment basis at the declared value of USD 13.40 on furnishing a personal bond.

Writ Petition No.5777 of 2007 filed under Article 226 of the Constitution of India for the issue of mandamus directing the respondents to permit clearance of the raw silk consignments covered under Bill of Entry B.E. Nos.370053 dated 05.01.2007 and 391723 dated 05.02.2007 imported by the petitioner under the Sales Contract No.SZTC/4036/06 dated 01.06.2006 by assessing the same.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

For Petitioner in WP.4956/2007 : Mr.Habibullah Badsha, Senior Counsel, for Mr.L.Maithili.

For Petitioner in WP.5444/2007 : Mr.K.Jayachandran

For Respondents in both the W.Ps. : Mr.T.S.Sivagnanam, ACGSC

ORDER

W.P.No.4956 of 2007

By consent the main writ petition itself is taken up for disposal.

2. The writ petition is filed for issuance of writ of mandamus directing the respondents to permit release of Mulberry raw silk imported under Bill of Entry No.356906 dated 14.12.2006 on a provisional assessment basis at the declared value of USD 13.40 on furnishing a personal bond.

3. The necessary facts for the disposal of the writ petition are as follows : The petitioner is a company and importer of raw silk through Chennai port. The petitioner, in the course of its business, imported 8840.60 kgs of raw silk from Uzbekistan under the bill of entry No.356906 dated 14.12.2006 declaring the value of the goods on the basis of the unit price at USD 13.40/kg. CIF as declared in the invoice of the foreign supplier. On a querry made by the respondents as to the country of origin, the petitioner filed a certificate issued by the Dubai Chamber of Commerce and Industries certifying that the goods were of Uzbekistan origin. Though the bill of entry was filed on 14.12.2006 and necessary reply has been filed to the querries, the goods were not permitted to be cleared. The petitioner by a letter dated 20.12.2006 informed the second respondent that earlier also they imported Melburry raw silk from Uzbekistan regularly at Chennai port at the declared value of USD 14.25/kg CIF and were permitted to be cleared at the marginal enhancement of USD 14.50/KG-CIF. The petitioner also furnished the particulars of those bills of entry in that letter and requested the respondents to allow the petitioner to clear the goods in view of the urgent requirement of the goods and mounting demurrage charges. In view of the urgency, the petitioner also offered that the goods be permitted to be cleared on the provisionally at the declared value of USD 13.40/kg-CIF.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The petitioner was informed by the Assistant Commissioner of Customs, Chennai by his letter dated 05.01.2007 that the bills of entry had been taken up for detailed investigation by SIIB. Since the process would take some time to complete, on 11.01.2007, the second respondent by a letter informed the petitioner to take provisional release of the goods on condition that (i) the provisional assessment would be carried out by adopting provisional duty of USD 28.00/kg CIF; (ii) the goods would be assessed provisionally to duty by adopting the declared unit price of USD 13.40/kg-CIF; (iii) as instructed by SIIB, a PD bond for the full enhancement value backed by 120% bank guarantee for the differential duty arising between declared value of USD 13.40/kg-CIF and provisional import value of USD 28/kg-CIF have to be executed by the petitioner. The petitioner, by its letter dated 17.01.2007 replied that the adoption of provisional import value at USD 28/kg-CIF was not proper as the same represented the value of certain imports from China of entirely different goods. By that letter the petitioner also stated that similar goods imported from Uzbekistan of other importers had been cleared by the respondents themselves at USD 14.50/kg-CIF. The demand of PD bond for the full enhancement value backed by 120% bank guarantee for the differential duty arrived between the declared value of USD 13.40/kg CIF and the provisional import value of USD 28/kg-CIF is highly inequitable. The demand of 120% of bank guarantee is also without any reasonable cause. The petitioner by that letter also requested to release the goods on submission of simple provisional bond without any bank guarantee or other security since the petitioner is a regular importer possessing valid import export code number and the petitioner is ready to furnish bank guarantee for the difference between the duty worked out on the basis of the value at USD 14.50/kg CIF and the duty liability worked out at the declared value of USD 13.40/kg-CIF. That was followed by another letter dated 31.01.2007. Though the respondents directed the petitioner to appear in person, as the attitude of the respondents is clear that they are sticking on to their letter dated 11.01.2007, the present writ petition is filed.

5. The primary contention of the respondents in their counter is that the unit price stated by the petitioner is very low when compared with the prevailing unit price which would be not less than USD 25.00/kg. As the declared value was quite low when compared with the goods of similar nature imported from China and the certificate of the country of origin was issued by Dubai Chamber of Commerce and Industry based on expert's declaration, the issue was referred to the Special Intelligence and Investigation Branch (SIIB) for detailed investigation. However, the petitioner was permitted to release the goods provisionally on execution of simple bond and bank guarantee at 120% for the differential duty arising out of declared value at USD 13.40/kg CIF and proposed enhancement price of USD 28.00/kg CIF. Whether the goods are of Uzbekistan origin or not and whether the certificate of origin issued by the Dubai Chamber of Commerce and

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Industry is genuine or not, are under investigation.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The one and the only reason given by the respondents is that when similar goods imported from China has been cleared at USD 28/kg, the declared price of the goods imported by the petitioner from Uzbekistan is USD 13.40 /kg. The genuineness of the origin of the country is also under investigation. In order to safeguard the interest of the revenue, the petitioner was permitted to clear the goods provisionally by complying with the conditions as stated above. Except this, there is no reason forthcoming from the respondents as to why, when similar consignments imported from Uzbekistan have been cleared at USD 14.50/kg, these consignments have been directed to be cleared at the higher value of USD 28/kg. The substantial reason given by the respondents is that the genuineness of the country of origin of the goods imported is under investigation.

8. It is always open to the respondents to verify the genuineness of the details of imports, particularly, the certificate of origin of the country. But when the invoice is clear, which shows that the value of the goods is USD 13.40/kg and when similar consignments have been cleared at USD 14.50/kg, mere assumption that the goods are identical to the one imported from China at the value of USD 28/kg, cannot by itself be a reason to fix the same rate for provisional clearance of the goods of the petitioner and the demand for 120% bank guarantee for differential duty is unrealistic.

9. Section 18 of the Customs Act provides that when the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon, the proper officer may direct that the duty leviable on such goods may, pending production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the importer furnishes such security as the property officer deems fit for the payment of the difference between the duty finally assessed and the duty provisionally assessed.

10. Having regard to the statutory provision and in view of the fact that similar nature of goods (Mulberry raw silk) from Uzbekistan have been cleared by the respondents themselves under bills of entry Nos.256473 dated 15.07.2006; 315675 dated 13.10.2006; and 330532 dated 06.11.2006 at USD 14.50/kg, I am of the view that the conditions for provisional clearance given by the proceedings of the respondents dated 11.01.2007 are highly arbitrary and stand to no reason. Hence, the conditions contained in the above referred to proceedings of the second respondent

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

dated 11.01.2007 is hereby modified to the effect that the goods covered under the bill of entry No.356906 dated 14.12.2006 are directed to be released provisionally on the petitioner furnishing bank guarantee for the differential value between USD 13.40/kg, the declared value and USD 14.50/kg the cleared value of the goods of similar nature imported from Uzbekistan and also execute personal bond for the differential amount between USD 14.50/kg, the cleared value of the goods of similar nature imported from Uzbekistan at USD 28.00/kg, the import value provisionally assessed by the respondents, to the satisfaction of the second respondent.

W.P.No.5444 of 2007

11. The dispute in the present writ petition is similar to that of the earlier writ petition. In this case the petitioner filed bills of entry in Nos.370053 dated 05.01.2007 and 391723 dated 05.02.2007 by declaring the price of the Mulberry raw silk of Uzbekistan origin imported by the petitioner at USD 14.25/kg. The goods have not been cleared. Considering the mounting demurrage charges and other charges payable, the petitioner requested the second respondent to release the goods provisionally covered by such bills of entry. However the bills were not assessed. Hence, the present writ petition.

12. Except the bills of entry, there is no variation in the facts of the present case to the facts of the earlier writ petition as narrated above. Further, in so far as this petition is concerned, the petitioner's earlier five consignments have been cleared by the respondents themselves in bills of entry Nos.256473 dated 15.07.2006; 266514 dated 31.07.2006; 315675 dated 13.10.2006; 330532 dated 06.11.2006; and 365506 dated 27.12.2006 at USD 14.50/kg covered under the very same contract dated 01.06.2006 under which the present disputed consignment is also covered.

13. For the reasons stated in the earlier writ petition, the goods covered by the bills of entry Nos.370053 dated 05.01.2007 and 391723 dated 05.02.2007 are directed to be released provisionally on the petitioner executing personal bond for the differential amount between USD 14.50/kg, the cleared value of the goods of similar nature imported from Uzbekistan and USD 28.00/kg, the value provisionally assessed by the respondents, to the satisfaction of the second respondent. It is agreed that the petitioner would pay duty at USD 14.50/kg.

14. With the modification in the impugned order as stated above, the writ petitions are disposed off. No costs. The connected miscellaneous petitions are closed. The respondents are

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

directed to assess the bills of entry at an early date so as to recover the amount due to the Government.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

mf

To

1. The Commissioner of Customs
(Seaport-Imports),
Customs House, 60 Rajaji Salai,
Chennai 600 001.

2. The Assistant/Deputy Commissioner
of Customs, Group 3 & 4,
Customs House, No.60, Rajaji Salai,
Chennai 600 001.

3. The Assistant/Deputy Commissioner
of Customs,(DEPB) Gr.7-B,
Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

2 ccs to M/s. T.S. Sivagnam, Sr. Nos.11750, 11753
1 cc to M/s. K. Jayachandran, Sr. 11669
1 cc to M/s. L. Maithili, Sr. 11695

WPS. Nos.4956 & 5444/2007

WEB COPY

GK (CO)
kk 2/3

https://hcservices.ecourts.gov.in/hcservices/